

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
PENSION FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS WELFARE FUND, NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS VACATION FUND, NEW YORK
CITY DISTRICT COUNCIL OF CARPENTERS ANNUITY
FUND, NEW YORK CITY DISTRICT COUNCIL OF
CARPENTERS APPRENTICESHIP, JOURNEYMAN
RETRAINING, EDUCATIONAL AND INDUSTRY FUND,
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
CHARITY FUND, and THE NEW YORK CITY AND VICINITY
CARPENTERS LABOR-MANAGEMENT COOPERATION FUND,
by MICHAEL J. FORDE, and JOSEPH OLIVIERI, as TRUSTEES,

05 CV 4021(JGK)(AFP)

AFFIDAVIT

Plaintiffs,

-against-

K W CONSTRUCTION, INC.

Defendant.

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State of New York)

) Ss:

County of Bronx)

John Whyte, being duly sworn, deposes and says:

1. I am the President K W Construction, Inc. ("KW").
2. KW is signatory to a collective bargaining agreement with the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America of which Plaintiffs are a beneficiary.
3. The Agreement requires KW to make available all books and records of the company requested by the Plaintiffs.
4. KW provided the Plaintiffs with all books and records of the company relating to the period January 1, 2000 through June 30, 2003. KW does not possess and cannot obtain its cancelled check documentation for the audit period and its 2002 cash disbursement journal, as compelled by Arbitrator Robert Herzog in an award dated December 10, 2004.
5. I understand that the Plaintiffs are foregoing legal action to compel the production of this information based on this affidavit.

6. I further understand that the Plaintiffs have conducted an audit of KW based on all available records from which findings have been made of delinquent benefit fund contributions.


JOHN WHYTE

Sworn to before me this
28 day of October, 2005


NOTARY PUBLIC

JAMES A. RANDAZZO
NOTARY PUBLIC-STATE OF NEW YORK
No. 02RA5020174
Qualified in Westchester County
Commission Expires November 15, 2005